

**BEFORE THE  
DIVISION OF MEDICAL QUALITY  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Petition for )  
Termination of Probation: )

**CHARLES R. PHILLIPS, M.D.** )  
Physician's and Surgeon's )  
Certificate No. G 16783 )

Respondent )  
\_\_\_\_\_ )

File No. 08-2001-120344 )

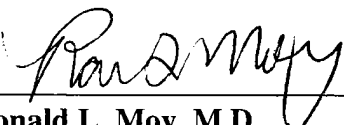
**DECISION**

The attached **Proposed Decision** is hereby adopted as the Decision and Order of the Division of Medical Quality of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on July 27, 2006

IT IS SO ORDERED June 27, 2006.

MEDICAL BOARD OF CALIFORNIA

By:   
**Ronald L. Moy, M.D.**  
**Chair**  
Panel B  
Division of Medical Quality

BEFORE THE  
DIVISION OF MEDICAL QUALITY  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Petition for Termination  
of Probation of:

CHARLES R. PHILLIPS, M.D.

Physician's and Surgeon's  
Certificate No. G 16783,

Petitioner.

OAH No. N2006030703

CASE No. 08-2001-120344

**PROPOSED DECISION**

This matter came on regularly for hearing before Jaime René Román, Administrative Law Judge, Office of Administrative Hearings, in Sacramento, California, on May 16, 2006.

Charles R. Phillips, M.D., appeared and represented himself.

Stephen M. Boreman, Deputy Attorney General, Health Quality Enforcement Section, Department of Justice, represented the Attorney General of the State of California.

Evidence was received and the matter submitted on May 16, 2006.

**FACTUAL FINDINGS**

1. On August 1, 1969, the Medical Board of California issued Physician and Surgeon's Certificate No. G 16783 to Charles R. Phillips, M.D. (petitioner). On August 14, 2003, the Division of Medical Quality, Medical Board of California, issued its Decision in *In the Matter of the Accusation Against Charles Roy Phillips, M.D.*, Case No. 08-2001-120344, revoking petitioner's license, staying the revocation, and placing petitioner on probation for a period of five years.

2. On December 7, 2005, petitioner filed a Petition for Penalty Relief praying for termination of probation.

3. The discipline imposed on petitioner's license occurred as a result of several violations of the Medical Practice Act:

- A. Gross negligence in violation of Business and Professions Code section 2236, subdivision (b).
- B. Incompetence in violation of Business and Professions Code section 2234, subdivision (d).
- C. Failure to maintain adequate records in violation of Business and Professions Code section 2266.

4. Petitioner's probation included, inter alia, successful participation in the PACE Program, to include the psychiatric evaluation, and cost recovery in the sum of \$10,000. Petitioner, owing some probation monitoring compliance costs due to diminished earnings and two children in college, has otherwise met all terms and conditions of his probation.

5. Petitioner is Board certified in emergency medicine. The factual underpinnings of his discipline commenced on June 12, 1999, when a 22-month girl was brought by her family to the Fresno Community Hospital Emergency Department after a day or more of diarrhea, vomiting, and high fever. She was initially seen by a physician assistant. The physician assistant examined the child and approved her discharge in the early morning hours of June 13, 1999. Three and a half hours later following discharge, the child went into respiratory arrest followed by cardiac arrest. She was rushed to the hospital by paramedics and died during their attempts to resuscitate her. An autopsy, two days later, attributed the cause of death to dehydration. Respondent, deferring in large part to the physician assistant, failed to properly assess and document the child's level of dehydration prior to discharge and failed to appreciate her need for continued hospitalization and aggressive treatment.

6. Petitioner clearly regrets his conduct that gave rise to his discipline. He acknowledges significant professional insight gained from the Board's disciplinary Order. He reports being far more professionally involved in patient care and supervision, expanded note taking and documentation, willing to solicit peers' advice, and heightened awareness on the symptoms of dehydration.

7. Petitioner, authoring a publication on emergency medicine, has expanded his Board certification to include family practice.

8. Petitioner, age 63, has continued to practice while on probation. Believing he has gained the optimum benefits of the Board's disciplinary Order, he seeks early termination of probation to expand his practice and financial opportunities.

9. Petitioner, clearly devoted to his wife and family, devotes substantial energy and time to them and church activities.

### LEGAL CONCLUSION

While the Board has articulated criteria relative to the imposition of discipline<sup>1</sup> or the reinstatement of a certificate,<sup>2</sup> it has not specified any criteria for consideration relative to a petition for termination of a licensee's discipline. Business and Professions Code section 2307 references the process and matters to be considered upon the filing and hearing of a petition to modify or terminate probation. In pertinent part, section 2307, subdivision (e) sets forth: "[T]he administrative law judge may consider all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time the certificate was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability."

To the end of ascertaining a petitioner's rehabilitation, the undersigned is highly influenced by the Board's criteria relative to both the imposition of discipline and reinstatement of a certificate which, although not directly applicable to the instant proceeding, are nevertheless highly instructive. Accordingly, the undersigned has largely considered, *inter alia*<sup>3</sup>:

- A. The nature and severity of the misconduct giving rise to discipline.<sup>4</sup>
- B. Evidence of any subsequent misconduct.<sup>5</sup>
- C. The time elapsed since the misconduct giving rise to discipline.<sup>6</sup>
- D. Petitioner's probationary compliance.<sup>7</sup>

Starting with petitioner's own acknowledgement of the impropriety of his underlying conduct, he readily accepted and accepts his personal responsibility for his errant conduct. Of import is the trial judge's observation that respondent did not lack any fund of knowledge issues. Accordingly, focusing on the second criteria, there is no evidence of subsequent misconduct. Nearly seven years have elapsed since the underlying errant conduct.

Of import is the success or lack of success of a probationer's compliance while on Board probation. The evidence establishes that petitioner embraced the Board's discipline.

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<sup>1</sup> California Code of Regulations, title 16, section 1360.1.

<sup>2</sup> California Code of Regulations, title 16, section 1360.2.

<sup>3</sup> California Code of Regulations, title 16, sections 1360.1, subdivision (f), and 1360.2, subdivision (e).

<sup>4</sup> California Code of Regulations, title 16, sections 1360.1, subdivision (a), and 1360.2, subdivision (a).

<sup>5</sup> California Code of Regulations, title 16, section 1360.2, subdivision (b).

<sup>6</sup> California Code of Regulations, title 16, sections 1360.1, subdivision (c), and 1360.2, subdivision (c).

<sup>7</sup> California Code of Regulations, title 16, section 1360.1, subdivision (d).

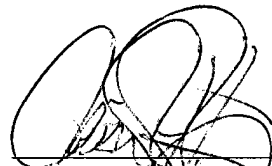
But for outstanding probation monitoring costs due to decreased earnings and additional family expenses,<sup>8</sup> he has met his remaining terms and conditions of probation.

Mindful that the Board's "disciplinary proceedings are intended to protect the public and are not penal in nature"<sup>9</sup> and that "protection of the public includes the prevention of future harm",<sup>10</sup> our legal system looks with particular favor on those who have properly reformed.<sup>11</sup> Upon balance, petitioner has sufficiently established cause to grant the petition to terminate probation pursuant to Business and Professions Code section 2307 and as set forth in Findings 1 through 9.

### ORDER

Upon the payment of all outstanding fees or costs due and owing the Medical Board of California, the Petition for Penalty Relief of Charles R. Phillips, M.D., Physician and Certificate No. G 16783, for early termination of probation is granted.

Dated: May 30, 2006



JAI ME RENE ROMÁN  
Administrative Law Judge  
Office of Administrative Hearings

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<sup>8</sup> Petitioner claims that were the Board to grant his petition, and aware that his income would rise from the Board's salutary action, he would borrow funds to satisfy his outstanding probation monitoring costs.

<sup>9</sup> *Medical Board of California v. Superior Court (Liskey)* (2003) 111 Cal.App.4th 163, 173.

<sup>10</sup> *Liskey*, *supra* at p. 178.

<sup>11</sup> *Resner v. State Bar* (1967) 67 Cal.2d 799, 811.